

Form 49  
[Rule 13.19]

ENTERED  
by CAS

COURT FILE NUMBER 1303 11388 ✓  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE EDMONTON  
APPLICANT MINISTER OF JUSTICE AND SOLICITOR  
GENERAL FOR ALBERTA  
RESPONDENTS JUSTIN TIMOTHY MACK, SCOTIA DEALER  
ADVANTAGE INC., AND THE CHIEF OF  
POLICE, EDMONTON POLICE SERVICE  
DOCUMENT **AFFIDAVIT**  
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT ALBERTA JUSTICE  
CIVIL FORFEITURE OFFICE, EDMONTON  
TELEPHONE: 780-427-1295  
FACSIMILE: 780-427-1230  
EMAIL: [CFO.EDM@gov.ab.ca](mailto:CFO.EDM@gov.ab.ca)



### **AFFIDAVIT OF CONSTABLE JESSIE POONIAN**

**Sworn on August 9, 2013**

I, Constable Jessie Poonian, regimental #2699, of the City of Edmonton, in the Province of Alberta, SWEAR AND SAY THAT:

1. I am a Peace Officer employed with the Edmonton Police Service ("EPS") as a Constable, and as such, I have personal knowledge of the matters hereinafter deposed to, except where stated to be based on information and belief, in which case I do verily believe the same to be true.
2. The information set out below was obtained through my direct involvement in the investigation described herein and is based upon information which I have personal knowledge of, or documents I have reviewed, or information I have received from other Peace Officers. Where information is stated in this document to have been received by Peace Officers, I believe such information in each and every case to be true because the Peace Officers giving, receiving or relaying the information were acting in the execution of their duties as Peace Officers at the relevant time and, as such, were under a legal and moral obligation to relate only the truth in relation to the events perceived or transmitted by them, insofar as that was possible for them to do.

This includes data from police computerized information networks such as but not limited to Alberta Government records, such as Motor Vehicles Registry Information (MOVES) and the CPIC (Canadian Police Information Center) and JOIN (Justice Online Information Network) criminal record information systems. Unless otherwise noted, all addresses mentioned are in Edmonton, Alberta.

3. I have been a member of the Edmonton Police service (EPS) since October 2005. I have worked in several areas of EPS including patrol, the Criminal Investigations Section (CIS) and the Traffic section. In December 2012, I was assigned to the Specialized Traffic Apprehension Team 3 ("STAT 3"). In my policing career, I have been involved in numerous driving related investigations, both pursuant to the *Criminal Code* and provincial legislation.
4. There are three Specialized Traffic Apprehension Teams ("STAT") within the Edmonton Police Service Traffic Section. Each STAT team is responsible for focused traffic enforcement and applying violence reduction strategies through data led enforcement programs developed by traffic planning and analysis unit. In addition to the above, STAT teams are also mandated to:
  - a. Initiate roadside Criminal Code investigations using traffic based enforcement activities;
  - b. Participate in violence suppression activities;
  - c. Analyze and create investigative plans and strategies for specific violence suppression activities involving Persons of Interest;
  - d. Prepare complete and comprehensive investigative reports for Alberta Justice / Public Prosecution Services of Canada;
  - e. Provide witness evidence for criminal and traffic matters in all levels of court.

#### THE PROPERTY

5. This Affidavit is made in respect of the vehicle described as a 2008 GMC Yukon bearing Alberta license plate [REDACTED] (VIN: [REDACTED]) (the "2008 GMC Yukon").

### **THE PARTIES**

6. The Respondent **Justin Timothy Mack ("Mack")** was at all material times the registered owner of the 2008 GMC Yukon. Attached as **Exhibit "A"** to this my Affidavit is a copy of the completed Motor Vehicle Registry Search, listing Mack as the registered owner of the 2008 GMC Yukon.
7. An Alberta Personal Property Registry Serial Number Collateral Search was conducted in respect of the 2008 GMC Yukon. Attached as **Exhibit "B"** to this my Affidavit is a copy of the search. I am advised by Exhibit "B" and do verily believe the only secured party in relation to the 2008 GMC Yukon is the Respondent Scotia Dealer Advantage Inc ("Scotia").
8. The 2008 GMC Yukon is currently being held by the Respondent Chief of Police, Edmonton Police Service, pursuant to section 19.5 of the Victims Restitution and Compensation Payment Act. The 2008 GMC Yukon is currently located at the Police Vehicle Seizure lot at 12230 – 124 Avenue, Edmonton, Alberta.
9. Other than the Respondents named herein, I am unaware of any other parties who may have interest in or who may be affected by a property disposal order made in relation to the 2008 GMC Yukon.

### **THE ILLEGAL ACT**

10. As a result of our investigation, detailed below, I believe the Respondent Mack was involved in the illegal acts of dangerous operation of a motor vehicle, assault, criminal harassment and mischief, contrary to sections 249(1)(a), 266, 264(1) and 430(1)(d) of the *Criminal Code*.
11. I further believe the 2008 GMC Yukon was used in carrying out these illegal acts, that, in turn, resulted in or was likely to or was intended to result in bodily harm to any person. The grounds for this belief are set out in this my Affidavit.

## THE INVESTIGATION

### Background

12. On April 22, 2013 I received a request from Sergeant Plomp of the Southwest Division to look into a driving complaint filed against the Respondent, Justin Mack. Sergeant Plomp took the initial report and forwarded the information to me for further investigation. I reviewed the initial report submitted by Sergeant Plomp and learned the following details from the initial report, which I verily believe to be true:
  - a. On April 21, 2013 at approximately 1:05 hours, Edmonton Police Service received a phone call from a complainant, indicating the occupants of another vehicle were throwing garbage at his vehicle. The complainant was able to obtain the license plate number of the other vehicle, [REDACTED] and described the vehicle as a gold coloured GMC Denali. The incident occurred at Whitemud Drive and Terwillegar Drive South. The other vehicle drove away after the complainant called police to complain about them. The call was entered as information only (broadcast) and not for dispatch;
  - b. Sergeant Plomp conducted Police Information Checks on the license plate and learned that the registered owner was Justin Mack, who has a date of birth of March 30, 1988. Sergeant Plomp was aware that Mack has been the subject of several road rage type occurrences in the last year or so, some involving violence. Sergeant Plomp documented the incident and requested Traffic Section to conduct further follow up.
13. On April 23, 2013 I spoke with the complainant by phone and asked him if he could meet with me at the police station so I could obtain a witness statement from him. I also asked him if he would be able to identify the driver of the GMC Yukon from a photographic line up. The complainant agreed to meet up with me to provide a written witness statement and to take part in a photographic line up interview.
14. On April 29, 2013 at approximately 18:30 hours, I met with the complainant at the Edmonton Police Service headquarters to conduct a photographic line up interview. The photographic line up consisted of ten mugshot photos of ten different individuals.

One of the photos in the photographic line up was that of the Respondent Mack. Constable Hoogenberg conducted the photographic line up, recorded by way of audio and video. I monitored the interview via CCTV camera from a separate room.

15. The complainant viewed all the photographs in sequential order and selected photo #5. Photo #5 is the Respondent Mack's mugshot photo. This ended the photographic line up interview with the complainant.
16. At the same time, the complainant provided a handwritten witness statement documenting the incident. I reviewed the witness statement provided by the complainant and made note of the following details, which I verily believe to be true:
  - a. On April 22, 2013 at approximately 01:00 hours, the complainant was driving his personal vehicle westbound on Whitemud Drive by the Terwillegar Drive exit. The complainant took the Terwillegar Drive exit and happened to be driving behind a 2008 GMC Yukon Denali. There is only one lane of traffic on the on ramp to Terwillegar Drive so the complainant had no choice but to follow the GMC Yukon truck;
  - b. While driving on the on ramp to Terwillegar Drive, the complainant noticed the GMC Yukon was swerving sporadically. The GMC then hit the curb, started to swerve and slowed down a great deal. The complainant assumed the driver was likely impaired. The GMC eventually merged onto Terwillegar Drive South from the on ramp. Terwillegar Drive South has two lanes of traffic and the posted speed limit on this section of the roadway is 70 kilometres / hour. The GMC was driving at approximately 35 kilometers / hour in the right lane, so the complainant decided to pass him. The complainant changed to the left lane and slowly accelerated to pass the GMC. As the complainant was passing the GMC, he heard two consecutive bangs likely generated by a plastic object being thrown on the passenger side of his vehicle. The complainant looked over to the right side and noticed the GMC Yukon's front windows were rolled down and the driver was screaming at him to pull over so he could "kick [his] ass";

- c. The complainant was intimidated by the driver so he slowed down to avoid confrontation with him. The complainant tried to pull back to obtain the GMC's license plate number, but the GMC also slowed down and kept pace with him. The complainant then observed the driver of the GMC Yukon throw two plastic bottles, believed to be full of water, at his vehicle which hit the front passenger side of his vehicle. The complainant then sped up to 80-90 kilometres per hour to get away from the GMC, but the other driver sped up as well;
  - d. The GMC Yukon then started to swerve towards the complainant's vehicle in an attempt to force him off the road. The complainant felt the driver would assault him if he pulled over, so he kept driving as the GMC kept inching towards his vehicle;
  - e. The complainant finally yelled back at the other driver that he was going to call the police. The GMC driver then sped up to get away but got hung up at the red light at 23 Avenue. At this time, the complainant took a photo of the GMC's license plate with his camera. Attached hereto and marked as **Exhibit "C"** is a printed copy of the digital picture taken by the complainant and provided to EPS;
  - f. The other driver saw the camera flash, and pulled his GMC Yukon beside the complainant's vehicle and threatened to find him. The GMC Yukon then took off in a different direction.
17. I am advised by the initial report submitted by Sergeant Plomp and do verily believe that the complainant called the police and reported the incident to the Police Communications section. The Communications section broadcasted the details of the incident to the patrol units in the area, but no actual call for service was entered. Later, the complainant examined his vehicle for any damage, but there was no obvious damage other than the minor scratches.

18. I am also advised by the initial report submitted by Sergeant Plomp, as well as by Sergeant Plomp himself, and do verily believe that he was the on-street supervisor when the information was broadcasted on the in car Police computer. Sergeant Plomp reviewed the information relayed in the broadcast and recognized the subject vehicle as belonging to the Respondent Justin Mack. The Respondent Justin Mack is known to involve in road rage type incidents. As a result, Sergeant Plomp submitted an initial report about the incident and forwarded to me for further action.
19. I checked the vehicle license plate provided by the complainant on the Police information computer and learned that the license plate is registered to a gold coloured 2008 GMC Yukon truck. Justin Timothy Mack is listed as the registered owner of the vehicle.

#### **Background Checks**

20. I then completed background checks on the Respondent Mack, which alerted me to the following prior incidents.

#### **April 20, 2005**

21. I read Constable Tuttle's report, relating to EPS File #05-49602, and learned the following:
22. The complainant was being followed in his vehicle by the Respondent Mack on 66 Street and 144 Avenue. Upon stopping at the intersection, the Respondent Mack exited his vehicle, yelled "you are dead" and reached into the window of the complainant's vehicle and punched the complainant 5 to 6 times with a closed fist in the face. The complainant continued to drive once the light turned green and Mack continued to follow him. Mack then pulled his vehicle directly in front of the complainant's vehicle and slammed on the breaks. The complainant stopped his vehicle to avoid a collision and once again, Mack approached his vehicle window and punched him several times with a closed fist. Mack then returned to his vehicle and drove off.
23. Approximately 40 minutes after the assault, the complainant was speaking with his friends when Mack drove his vehicle towards him. As the complainant ran to his vehicle

to escape, Mack blocked the escape route with his vehicle and attempted to strike the complainant again. Mack pulled the complainant out of his vehicle by his legs and slammed him to the ground. Two of Mack's associates came to the scene and along with Mack, repeatedly kicked and punched the complainant.

24. Mack and his associates then caused extensive body and glass damage to the complainant's car, totalling \$3,585.00 in damage.
25. The complainant suffered two fractures to his left arm, laceration and bruising to his right arm, bruising and swelling to his face, back, and ribcage. Of note, Mack was upset that his ex-girlfriend was now in a relationship with the complainant.
26. The Respondent Mack was charged with assault causing bodily harm contrary to section 267(b) of the *Criminal Code*, mischief with damage under \$5,000.00 contrary to section 430(1)(a) of the *Criminal Code*, and assault contrary to section 266 of the *Criminal Code*. The assault causing bodily harm and mischief charges were withdrawn. The Respondent Mack was convicted of assault contrary to section 266 of the *Criminal Code* and sentenced with 8 months of probation.

#### **February 27, 2010**

27. I read Constable Hlushak's report, relating to EPS File #10-28621, and learned the following:
28. The complainant stated he was assaulted by the driver of a black Lincoln Navigator, bearing license plate [REDACTED]. The complainant stated the incident stemmed from a "road rage" incident between the driver and himself. At the intersection of 50 Street and 146 Avenue, the Navigator failed to stop at the stop sign and the complainant was forced to slam on his brakes in order to avoid a collision. As a result, the complainant honked his horn.
29. As the complainant followed the Navigator on 144 Avenue, the driver of the Navigator stopped his vehicle in the middle of the road, exited the vehicle and approached the



complainant's driver's side window. The driver then proceeded to yell and swear at the complainant and punched him in the face. The driver then sped off in the Navigator.

30. The driver was described as a male, less than 30 years old, with an olive skin tone, wearing a t-shirt, gold chain, approximately six feet tall with a slimmer build.
31. The complainant suffered a swollen upper lip, and one of his lower right molars was chipped.
32. Police queried the license plate on the Canadian Police Information Centre (CPIC) database and learned that it was registered to a 2007 black Lincoln Navigator. The Navigator was registered to the Respondent Mack. Attempts at contacting the registered owner of the Navigator were unsuccessful.

**June 19, 2011**

33. I read Constable Humphreys' report, relating to EPS File #11-79837, and learned the following:
34. The complainant was driving northbound on Anthony Henday Drive and needed to turn eastbound onto 87 Avenue so he changed from the number 1 into the number 2 lane. The driver of a black Lincoln Navigator [REDACTED], who was driving behind the complainant, pulled up beside the complainant and yelled profanities at him. The driver also threatened to knock the teeth out of the complainant and his passenger while holding a baseball bat in a threatening manner.
35. The complainant described the driver of the Navigator as a white male, possibly Lebanese decent, with brown/dark hair, dark eyes, very hairy arms, appearing to work out but still skinny, wearing a tight fitting "Hugo Boss" polo shirt and blue jeans.
36. The complainants did not want to make a statement for fear of having to go to court.

37. Police queried the license plate on the Canadian Police Information Centre (CPIC) database and learned that it was registered to a 2007 black Lincoln Navigator. The Navigator was registered to the Respondent Mack.

July 13, 2011

38. I read Constable Ahlstrom's report, relating to EPS File #11-91068, and learned the following:
39. The complainant was driving northbound on 111 Street when he observed a black Lincoln Navigator travelling very close to his back bumper. The complainant hit the brake to make the driver of the Navigator back off and then changed lanes to allow the Navigator to pass him. As the Navigator passed him, the driver threw a plastic water bottle at the complainant's vehicle, causing a dent to the door.
40. The driver of the Navigator was described as a white male with short or shaved hair.
41. Police queried the license plate on the Canadian Police Information Centre (CPIC) database and learned that it was registered to a 2007 black Lincoln Navigator. The Navigator was registered to the Respondent Mack. Later, police made contact with Mack, who stated he was not driving his vehicle that day.

July 17, 2011

42. I read Constable Price's report, relating to EPS File #11-92851, and learned the following:
43. The complainant was driving westbound on 23 Avenue at 105 Street with his wife and three young children. At the time, traffic was moving very slowly as there was construction in the area and there was only one lane open for east and westbound traffic. Mack was the passenger in his girlfriend's vehicle when they came to a stop behind the complainant's vehicle. Mack then pulled the complainant out of the vehicle, punching him two times in the nose with a closed fist. As Mack returned to his girlfriend's vehicle, he tried to rip off the license plate of her Mercedes.

44. The passenger of the Mercedes was described as a white male, 25 to 30 years of age, with short blond hair, a slender build, wearing a white t-shirt.
45. The complainant sustained a fractured nose.
46. A JOIN check revealed the Respondent Mack was convicted of assault contrary to section 267(b) of the *Criminal Code*, and convicted of mischief causing damage under \$5,000.00. He was sentenced to a 24 month suspended sentence. The charge of failure to comply with a probation order, contrary to section 733.1(1), was withdrawn.

**November 16, 2011**

47. I read Constable Gudya's report, relating to EPS File #11-1450921 and learned the following:
48. The complainant was driving northbound on Highway 216 at Baseline Road when a black Lincoln Navigator was driving erratically and cut him off. The complainant was barely able to avoid being hit by the Navigator. The driver of the Navigator was slamming on his brakes and gave the complainant the finger as well. Both the complainant and the driver of the Navigator stopped their vehicles and an altercation took place.
49. Police attended and identified the driver of the vehicle as Mack. When they initially arrested him for assault, Mack was found to be very twitchy and could not sit still in the police car. Police believed Mack had consumed a quantity of prescription drugs that would make it hazardous and unsafe for Mack to drive a motor vehicle. He was issued a 24 hour suspension and his vehicle was towed. The complainant did not want to proceed with assault charges.

**December 1, 2012**

50. I read Constable Osborne's report, relating to EPS File #12-156961 and learned the following:

51. The complainant was driving northbound on Gateway Boulevard coming into Edmonton from Leduc. As he passed a gold GMC Yukon [REDACTED], the driver of the Yukon forced the complainant's vehicle over a lane and proceeded to slam on the brakes when the complainant returned behind the Yukon. The complainant followed the Yukon to a railway crossing where the complainant then exited his vehicle and exchanged heated words with the driver of the Yukon. The driver then told the complainant he had a weapon and the complainant was able to see a bit of black colouring on an object concealed in the driver's hand. The complainant left the area to report the incident to the police.
52. Police contacted Mack, the registered owner of the vehicle, and Mack had a similar story of events except that he stated he did not have a weapon. No charges were laid.

#### **January 22, 2013**

53. I read Constable Olson's report, relating to RCMP file #2013-83793 and learned the following:
54. The complainant was driving southbound on Anthony Henday Drive at Wye Road. Some driving issues occurred between the complainant and the driver of a gold GMC Yukon with license plate [REDACTED] which resulted in the complainant "flipping the driver of the Yukon off." The driver of the Yukon then flashed a handgun at him. The driver was the only occupant of the vehicle. The driver is described as a male wearing a white baseball hat and black jacket. Police attempted to contact Mack, the registered owner, however they were unsuccessful.

#### **The Arrest: July 31, 2013**

55. On July 31, 2013 at approximately 08:30 hours, I drove by the Respondent Mack's residence of 5925 South Terwillegar Boulevard. I observed a 2008 gold coloured GMC Yukon, with license plate [REDACTED], parked on the street in front of the residence. A query of the license plate against the CPIC database on the Mobile Work Station (MWS)

in my Police vehicle revealed the 2008 GMC Yukon was registered to the Respondent Mack and has a Vehicle Identification Number of [REDACTED]

56. I conducted static surveillance on the residence. At 08:43 hours, the Respondent Mack exited the residence and took the driver's seat of the 2008 GMC Yukon. The 2008 GMC Yukon was followed to Mac's convenience store located at Town Centre Boulevard and Terwillegar Boulevard. At 08:46 hours, the 2008 GMC Yukon was followed back to the same residence. The Respondent Mack exited the vehicle and went back to his residence.
57. Between 10:00 to 12:30 hours, static surveillance was jointly maintained by Constable Noel, Constable Doherty and I.
58. At 15:31 hours, the Respondent Mack was observed leaving his residence with two unknown males. The Respondent Mack took the driver seat of the 2008 GMC Yukon. One unknown male took the front passenger seat and the second unknown male took the rear back seat. The GMC Yukon was followed to Anthony Henday Drive and Rabbit Hill Road. At 15:38 hours, Constable Doherty, Constable Noel and I jointly conducted a traffic stop.
59. Constable Doherty and I approached the vehicle from the driver's side and identified the driver as the Respondent Mack via his mugshot photo. Standing next to the open driver's side window, I detected a light odour of fresh marihuana emanating from the vehicle's interior. At 15:40 hours, I removed Mack from his vehicle and arrested him on the following criminal charges: dangerous operation of a motor vehicle, assault, criminal harassment and mischief.
60. The Respondent Mack was handcuffed and frisk searched, but nothing of an objectionable nature was located on his person. I checked his name against the CPIC database on the MWS and learned that he has a valid Alberta's operator's license. Further computer checks revealed that:
  - a. On April 26, 2013, the Respondent Mack was charged with assault contrary

to section 266 of the *Criminal Code*. Mack was convicted of the said charge and was released on a probation order under EPS file #12-55053. Upon release he was bound by nine conditions. Two of the release conditions for the accused state:

- i. Keep the peace and be of good behaviour;
- ii. You shall refrain from purchasing, possessing, using or consuming alcohol, other intoxicating substances or any non-prescribed controlled substance within the meaning of the *Controlled Drugs and Substances Act*. You shall not permit any of these substances in your residence.

- 61. At 15:50 hours, I read him his *Charter* rights to counsel. I asked him if he understood his rights to which he replied "Yep." I asked him if he wished to speak to a lawyer to which he replied, "Ya, I'll call a lawyer, please." At 15:51 hours, I read him the standard Police caution, which he understood.
- 62. At this time the front seat passenger was identified by Constable Doherty as Rojas, Jorge/Andres. Rojas had three outstanding form 7 warrants out for his arrest. He was arrested/chartered/cautioned and lodged at the Detainee Management Unit for bail hearing under EPS file #13-102823.
- 63. Constable Noel conducted a cursory search of the vehicle and located a small silver marihuana grinder in plain view on the back seat. Constable Noel opened the grinder lid and located a green leafy substance inside believed to be marihuana. At 15:53 hours, I took custody of the marihuana grinder (with suspected marihuana) from Constable Noel. At 15:54 hours, I advised the Respondent Mack of the additional charges of possession of a controlled substance and breach of his probation order, to which he responded "I understand."
- 64. The finding of marihuana inside the vehicle also explained the light odour of fresh marihuana that I had detected earlier while standing next to the driver's open window. I was already aware of the Respondent Mack's probation condition not to possess